IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5025 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE PRADIP KUMAR SARKAR

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GANESHMAL NEMCHAND SHAH

Versus

SECRETARY PANCHAYAT DEPARTMENT

Appearance:

MR VIPUL S MODI for Petitioner

MR AJ DESAI AGP for Respondent Nos.1 and 2.

MR VM BAROT for Respondent No. 3

CORAM : MR.JUSTICE PRADIP KUMAR SARKAR

Date of decision: 05/12/2000

ORAL JUDGEMENT

1. I have heard Mr. Vipul Modi learned counsel appearing on behalf of the petitioner, Mr. V.M. Barot learned Advocate appearing on behalf of the respondent No.3, and Mr. A.J. Desai for respondents State.

2. The petitioner is an elected member of Banaskantha District Panchayat. A criminal complaint was lodged against the petitioner for the offences alleged to have committed under Sec.365, 342, 384, 114 of Indian Penal Code. The respondent No.2, pursuant to the registration of the said criminal complaint, issued a notice to the petitioner and after hearing the petitioner, the responent NO.2 passed order removing the petitioner as a member of Banaskantha District Panchayat. The petitioner having felt aggrieved by the said order passed by the respondent No.2, preferred an appeal before the Government. The Government initially passed an interim order staying the order passed by the respondent No.2 on 31st August, 1998. Thereafter, after hearing the counsel of all the parties, the Government rejected the appeal filed by the petitioner. The petitioner having felt aggrieved by the order passed by the Government rejecting the appeal, has filed this Special Civil Application for quashing and setting aside the order passed by the Government and earlier order of the respondent NO.2. During the pendency of the case, the order was passed by this Court directing the Judicial Magistrate (F.C.) at Deesa for early disposal of Criminal Case No.2047 of 1997 and accordingly the learned Judicial Magistrate (F.C.) at Deesa disposed of the aforesaid criminal case by his judgement and order dtd. 31/8/2000. During the trial, the learned Judicial Magistrate held that the prosecution has failed to bring home the charge against the petitioner and accordingly the learned Judicial Magistrate acquitted the petitioner from the said criminal case. It is submitted by the learned counsel for the petitioner that against the order of the learned Judicial Magistrate (F.C.) at Deesa passed in Criminal Case NO.2747 of 1997, no appeal or revision has been filed and order of the Judicial Magistrate (F.C.) at Deesa has reached its finality. The learned counsel for the petitioner accordingly submitted that since the criminal case filed against the petitioner has ended in an acquittal, the order of the Development Commissioner respondent NO.2 and the order of the Government passed in appeal on 6th July, 1999 is required to be quashed and set aside.

3. I have heard Mr. V.M. Barot learned counsel

appearing on behalf of the respondent No.3 has fairly submitted that since the petitioner has been acquitted by the Criminal Court, there is no allegation pending against the petitioner, and therefore, the order passed by the respondent No.2 and the Government on the basis of the pendency of the the criminal case has no force now.

4. Mr. Desai learned AGP has also submitted that merely on the basis of the filing of the FIR, the petitioner should not have been removed and now as the Criminal Court has acquitted the petitioner, the petitioner is entitled to benefits of his acquittal. Having regard to the submissions of the learned advocate representing the parties, I am of the view that since the criminal case filed against the petitioner ended in an acquittal, the order of removal from continue as a member of the Banaskantha District Panchayat should also be quashed. Accordingly the order of removal of the petitioner passed by the respondent No.2 and the State Government is hereby quashed and set aside. The petition is allowed. Rule is made absolute. In the facts and circumstances of the case, no order as to costs.

(P.K. SARKAR, J.)

Rafik